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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

H.C.P.No.18/2007

Saroja .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. By its Secretary,
Prohibition and Excise Department
Fort St.George, Chennai-9.

2.Commissioner of Police,
Trichirapalli city,
Trichy District. .. Respondents.

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to produce the body of the Petitioner's son Krishnamoorthy @ Krishnan who is in Central Prison, Trichy before this Court and set him at liberty.

O R D E R

(Order of the Court was made by R.BANUMATHI, J.)

Challenge in this Habeas Corpus Petition is to the detention order dated 23.12.2006 whereby petitioner's son Krishnamoorthy @ Krishnan was branded as "Goonda" as contemplated under Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2.The question for consideration is whether it is necessary for the Detaining Authority to take into consideration any bail application filed by the detenu and bail order passed by the criminal Court on the said application, as a matter of Rule to be placed before the Detaining Authority and whether non-furnishing of copy of the said bail application and order to the detenu would vitiate the detention order.

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3.The detenu had earlier come to adverse notice in two cases in Tiruchi Cantonment P.S. [Cr.No.1200/2006 under Ss.395 and 3976 IPC]; Trichi Woraiyur P.S. [Cr.No.826/2006 under Sec.397 r/w 397 IPC]. The immediate cause for passing the detention order is the occurrence on 12.11.2006 wherein the detenu is alleged to have snatched gold chain from the defacto complainant, regarding which a case was registered in Cr.No.904/2006, Woraiyur P.S. On being satisfied that if the detenu comes out on bail he will indulge in future activities which would be prejudicial to the maintenance of public order, the impugned detention order was clamped on the detenu.

4.Even though several contentions were raised and argued as well, the learned Counsel mainly projected that the detention order is vitiated due to non furnishing of copy of bail application. Drawing our attention to page 73 of the paper book, the learned Counsel for the petitioner has contended that the detenu was granted bail in Cr.No.944/2006 while so, the bail application filed in the said case was not placed before the Detaining Authority which would have greatly influenced the mind of the Detaining Authority before passing the detention order.

5.It is seen from paper book page no.73 bail was granted as per the order in CMP No.5104/2006. But page no.73 does not reflect the Crime number. In the affidavit, though the Sponsoring Authority has stated about the grant of bail in Cr.No.904/2006, copy of bail application does not seem to have been placed before the Detaining Authority on 21.12.2006. Detention order was clamped on the detenu on 23.12.2006. The learned counsel for petitioner has contended that detenu was released on bail and was at liberty at the time of passing the order of detention and the Detaining Authority has to necessarily rely upon grant of bail. In such case, it is contended that bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu and non-supply of copy of bail application would vitiate the detention order.

6.In Ahamedkutty Vs.Union of India [1990(2) SCC 1 : 1990 SCC (Cri) 258], Supreme Court has held that it was mandatory for the Detaining Authority to consider the contents of the bail application and the order made thereon and the same having not been done, the order of detention is vitiated. In the said case, Supreme Court has held :

> "7.Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the Detaining Authority itself would have been impaired and if those had been considered, they would be documents relied on by the Detaining Authority though not specifically

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mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case".

7.Ahamedkutty's case does not lay down a mandatory principle in law that in every case, application for bail and the order made thereon shall be placed before the Detaining Authority. Explaining the above observation in the said Judgment of the Ahamedkutty's case, in 1992(1) SCC 1 : 1992 SCC (Cri) 1 [Abdul Sathar Ibrahim Manik Vs.Union of India] the Supreme Court has held as follows :-

(1)A detention order can validly be passed in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in jail.

(2)When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends on various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a High Court.

(3)If the detenu has moved for bail then application and the order thereon refusing bail even if not placed before the Detaining Authority, it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the Detaining Authority was aware of the fact that the detenu was in actual custody.

(4)Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5)When the Detaining Authority has merely referred to them in narration of events and has not relied upon them,

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failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the Detaining Authority has not only referred has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India.

Wherein in a given case the Detaining Authority has casually or passingly referred to these documents or also relied upon them depend upon the facts and the grounds, which aspect can be examined by the Court.

(6)In a case, where detenu is released on bail and is at liberty at the time of passing the order of detention, then the Detaining Authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

8.Referring to Abdul Sathar's case and holding that requirement of placing the application for bail and the order made thereon are not always mandatory and that such requirement would depend upon the facts of each case, in 2005 SCC Crl.1514 [K.Vardharaj Vs. State of Tamil Nadu & another], the Supreme Court has held as under :

"..... [T]herefore, we cannot read into the observation of this Court that in every case where there is an application for bail and an order made thereon, the Detaining Authority must as a rule be made aware of the said application and order made thereon. In our opinion the need of placing such application and order before the Detaining Authority would arise on the contents of the documents. If the documents do contain some material which on facts of that case would have some bearing on the subjective satisfaction of the Detaining Authority then like any other vital material even this document may have to be placed before the Detaining Authority. In our opinion, the Judgment of this Court in Ahamedkutty does not lay down a mandatory principle in law that in every case the application for bail and the order made thereon should be placed before the Court. We are supported in this view of ours by the Judgment relied on by the Judgment relied on by the State in Abdul Sathar.

.....

..... From the above observations, it is clear that placing of the application for bail and the order made thereon are not always mandatory and such requirement would depend upon the facts of each case. We are in respectful agreement with the view expressed by the above said two judgments which in our opinion are not conflicting". (Emphasis added)

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9.It is well settled that requirement of placing bail application before the Detaining Authority would depend upon facts of each case and the notice of which the Detaining Authority ought to take notice would also depend upon facts of each case. Now we will consider whether in the instant case, facts require the Detaining Authority to be aware of the contents of the bail application and the order thereon. As noted earlier, in CMP No.5104/2006, bail was granted by the Judicial Magistrate on 21.12.2006. In the said order, [at page 73 of the Paper Book], crime number is not mentioned. In its affidavit filed before the Detaining Authority, the Sponsoring Authority has averred that in CMP No.5104/2006, bail was granted to the detenu in the ground case in Cr.No.904/2006. Under such circumstances, as such, non furnishing of bail application cannot be said to be fatal.

10.However facts and few allegations reflected in the bail order constrains us to take the view that there was requirement of furnishing of copy of bail application before the Detaining Authority and furnishing copy of the bail application to the detenu. Objecting grant of bail before the Judicial Magistrate Court, that learned Assistant Public Prosecutor has stated that the detenu is involved in chain snatching cases and several murder cases. The objection raised for grant of bail reads "gy bfhiy tHf;Ffspy; bjhlh;g[,Ug;gjhft[k;. gpzapy; tpLtpj;jhy; jiykiwthfptpLthh; vd;Wk; Ml;nrgpf;fg;gl;Ls;sJ". As noticed earlier, adverse cases only relate to robbery cases and does not indicate involvement of detenu in murder cases. Inspite of such objection and alleged involvement of the detenu in a serious offence, Court has proceeded to grant bail. In such view of the matter, in our opinion, bail application is a vital document, which ought to have been placed before the Detaining Authority. In our opinion, bail application and order is a vital document which the Detaining Authority ought to have considered it and mere awareness on its part about grant of bail is not sufficient. In the facts and circumstances of this case, we hold that the Sponsoring Authority was expected to place the bail application before the Detaining Authority and non-furnishing of copy of bail application to the detenu has the effect of vitiating the Detaining Authority. The learned Addl. Public Prosecutor has placed reliance upon the decision of the Supreme Court reported in 2006(2) SCC Cri 90 [Sunila Jain Vs. Union of India and another] in the said case, non supply of a copy of the bail application was raised as a contention for setting aside the order of detention and the Supreme Court came to the conclusion that non supply of the bail application in the facts and circumstances of the case would not have the effect of vitiating the order of detention.

11.Referring to Sunila Jain's case, in 2007(1) MLJ Crl. 18 [Jarinabegum Vs.State of Tamil Nadu and another] to which one of us

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was a member [Justice P.K.MISRA], this Court has held "in the peculiar facts of the said case, the Supreme Court came to the conclusion that non-furnishing of the bail application was immaterial". The case in hand is distinguishable on facts.

12.As already noticed by us, in the present case, non furnishing of copy of bail application to the detenu has the effect of vitiating the detention order. Therefore, the detention order is liable to be quashed.

13.In the result, the detention order is set aside and this petition is allowed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

Tar

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government,
Prohibition and Excise Department
Fort St.George, Chennai-9.

2.The Commissioner of Police,
Trichirapalli City, Trichy District.

3.The Superintendent,
Central Prison, Tiruchirappalli.

4. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5.The Public Prosecutor,
High Court, Madras

VC(CO)
SR/24.7.2007

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